SUPREME COURT OF THE UNITED STATES.

No. 51.

HUGH M. KEARY ET AL., PLAINTIFFS IN ERROR,

vs.

THE FARMERS' AND MERCHANTS' BANK OF MEMPHIS.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF MISSISSIPPI.

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S. D. Langtree, Print.

FARMERS' & MERCHANTS' BANK OF MEMPHIS
vs.
HUGH M. KEARY et al.

Pleas before the Honorable Samuel J. Gholson, District Judge of the United States, at a Circuit Court of the United States, held at the town of Jackson, in and for the Ninth Circuit and Southern District of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and forty.

Be it remembered, that heretofore, to wit, on the tenth day of March, in the year of our Lord one thousand eight hundred and forty, came the President, Directors and Company of the Farmers' and Merchants' Bank of Memphis, by H. D. Mandeville, their attorney, into the clerk's office of the court aforesaid, and sued out the following writ of summons ad respondendum against Hugh M. Keary et al., to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss.

The President of the United States, to the Marshal of the Southern District of Mississippi, greeting

We command you, without delay, to summon Hugh M. Keary, Patrick F. Keary, and Charles Lacoste, citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the city of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to the President, Directors and Company of the Farmers' and Merchants' Bank of Memphis, who are citizens of the State of Tennessee, of a plea of trespass on the case to their damage nine thousand dollars; and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the tenth day of [L. S.] March, A. D. 1840, and in 64th year of the Independence of the United States.

WM. BURNS, *Clerk.*

Marshal's Returns.

Executed on Charles A. Lacoste, 19th March, 1840.

WM. M. GWIN, *Marshal, by*
ANS. LYNCH, *his Deputy.*

Executed on both the Keary's, by delivering each a copy in person, 10th April, 1840.

WM. M. GWIN, *Marshal, by*
N. C. GORDON, *D. Marshal.*

And on the same day of suing out the writ aforesaid, the plaintiffs, by their attorney aforesaid, filed their declaration herein, in the words and figures following, to wit:

UNITED STATES OF AMERICA,

Southern District of Mississippi, United States Circuit Court for said District, May Term, A. D. 1840.

The President, Directors and Company of the Farmers' and Merchants' Bank of Memphis, who are citizens of the State of Tennessee, by their attorney, complain of Hugh M. Keary, Patrick F. Keary, and Charles A. Lacoste, who are citizens of the State of Mississippi, in custody, &c., of a plea of trespass on the case; for that, whereas the said Hugh M. Keary and Patrick F. Keary, at Pinckneyville, in the district aforesaid, on the eighteenth day of February, Anno Domini, eighteen hundred and thirty-eight, made their promissory note in writing of that date, and then and there delivered the same to the said Lacoste, and thereby promised to pay twelve months after the date thereof, to the said Lacoste, by the name and description of Briggs, Lacoste & Co., or order, for value received, four thousand eight hundred sixty-three dollars fifty-five cents, payable and negotiable at the Planters' Bank in Natchez, to wit: the Planters' Bank of the State of Mississippi, and the said Lacoste, then and there by the name and signature of Briggs, Lacoste & Co., endorsed and delivered the same to the plaintiffs; and the said plaintiffs say that afterwards, when the said note became due and payable, to wit: on the twenty-first day of February, Anno Domini eighteen hundred and thirty-nine, the said note was presented to the teller of said bank, and the payment of the same was then and there demanded; but that neither the teller of said bank nor the said defendants did, or would, at that or any other time, before or since, pay the said note to the said plaintiffs; of all which, the said Lacoste then and there had notice; by means whereof, the said Hugh and Patrick became liable on the day and year first above mentioned, at the district aforesaid, and then and there, in consideration thereof, promised to pay the said plaintiffs the amount of said note according to the tenor and effect thereof; and the said Lacoste, on the twenty-first day of February aforesaid, at the district

aforesaid, became liable; and, in consideration thereof, then and there promised the said plaintiffs to pay them the amount of said note upon request. Yet, though often requested, the said defendants have not paid the amount of said note to said plaintiffs, but wholly refuse so to do, to the damage of said plaintiffs of nine thousand dollars. And therefore, they bring suit, &c.

H. D. MANDEVILLE, JR.,
Attorney for Plaintiffs.

(Copy of Note sued on.)

$4,863 55. PINCKNEYVILLE, *February* 18, 1838.

Twelve months after date, we, or either of us, promise to pay to Briggs, Lacoste & Co., or order, for value received, four thousand eight hundred and sixty-three dollars and fifty-five cents, payable and negotiable at the Planters' Bank, in Natchez.

HUGH M. KEARY,
PATRICK F. KEARY.

Endorsed, Briggs, Lacoste & Co.

MAY TRRM, 1840.

And now, at this term, the said defendants, Hugh M. Keary and Patrick F. Keary, in proper person, come and defend the wrong and injury, when, &c., and say that the said court ought not further to take cognizance of, or sustain the action aforesaid, because they, the said defendants, say that the cause of the action aforesaid, if any accrued to the said plaintiffs, accrued by virtue of the aforesaid promissory note, made payable to the order of the aforesaid Charles A. Lacoste, and by him, the said Lacoste, endorsed to said plaintiffs; and said defendants aver that, at the time of making the aforesaid note, and at the time of the commencement of plaintiffs' said action, the said defendants, and the said Charles A. Lacoste, were citizens and residents of the said State of Mississippi, which they are ready to verify. Wherefore, they pray judgment, if the said court here will take further cognizance of or sustain the aforesaid action, and for their costs.

HUGH M. KEARY,
PATRICK F. KEARY.

And the said plaintiffs say that the said plea, and the matters and things therein contained, are not sufficient, in law, to bar them of their aforesaid action against said defendants; and this they are ready to verify. Wherefore, they pray judgment, &c.

MANDEVILLE,
For Plaintiffs.

And afterwards, to wit, at the said May term of the court aforesaid, to wit, on the twenty-third day of May, in the year of our

Lord, one thousand eight hundred and forty, came as well the said plaintiffs, by their attorney aforesaid, as the said Hugh M. Keary and Patrick F. Keary, in proper person; and the plaintiffs' demurrer to the plea of said last named defendants being argued, and mature deliberation being thereon had by the court, it is ordered that the same be sustained; and thereupon, leave is given the said Hugh M. Keary and Patrick F. Keary to plead over, which they failing to do, the action of the said plaintiffs' above thereof against them, remains altogether undefended; and it appearing to the satisfaction of the court, that the writ aforesaid has been duly executed on the defendant, Charles A. Lacoste, and he failing to appear, though solemnly called; therefore, it is considered by the court that the said plaintiffs recover, against the defendants, the sum of five thousand three hundred and fifty-two dollars, their damages, which they have sustained by reason of the premises, and their costs by them about their suit in this behalf expended. And the said defendants in mercy, &c.

UNITED STATES OF AMERICA,
Southern District of Mississippi, sct.
Circuit Court of the United States.

I, William Burns, clerk of the court aforesaid, do hereby certify that the foregoing is a true and complete transcript of the record of a judgment between the parties therein named, as fully and completely as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand and af-
[L. S.] fixed the seal of said court, this seventh day of November, 1840.

WM. BURNS,
Clerk Circuit Court of U. States,
Southern District of Mississippi.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Judges of the Circuit Court of the United States for the Southern District of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between the President, Directors and Company of the Farmers' and Merchants' Bank of Memphis, plaintiffs, and Hugh M. Keary, Patrick F. Keary, and Charles A. Lacoste, defendants, a manifest error hath happened, to the great damage of the said Hugh F. Keary, Patrick F. Keary, and Charles A. Lacoste, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the second Monday of January, in the [L. S.] year of our Lord one thousand eight hundred and forty, and of the Independence of the United States, the sixty-fifth year.

WM. BURNS,
Clerk C. C. U. S., Sou. Dist. of Mississippi.

Issued, 17th November, 1840.

UNITED STATES OF AMERICA, *ss.*

To the President, Directors, and Company of the Farmers' and Merchants' Bank of Memphis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the ninth circuit and southern district of Mississippi, wherein Hugh M. Keary, Patrick F. Keary, and Charles A. Lacoste, are plaintiffs, and you are defendants in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the district of [L. S.] Mississippi, this seventeenth day of November, in the year of our Lord one thousand eight hundred and forty, and in the sixty-fifth year of the Independence of the United States.

S. J. GHOLSON.

KEARY'S, *et al.* appellants,
vs.
BANK MEMPHIS, appellee. } January T. Sup. Court U. S. 1841.

Assignment of Error.

1st. There is error in this, that the declaration injoining the defendants as drawers and indorser of the note sued on, and showing the seperate contracts and undertaking of said drawers and in-